



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Ecology AO #13-09

Permanent Rule Only

Effective date of rule:

Permanent Rules

- ☒ 31 days after filing.
☐ Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose: The Department of Ecology is repealing chapter 173-322 WAC and adopting new chapter 173-322A WAC, Remedial Action Grants and Loans. The new chapter modifies and replaces the repealed chapter. The purpose of the rule making is to:

1. Implement changes to the Model Toxics Control Act, Chapter 70.105D RCW, passed by the Washington State Legislature in 2013 affecting the remedial action grant and loan program. The legislation establishes new funding priorities for the program and directs Ecology to make several changes to the program, including:
 - Enter into extended grant agreements with local governments for projects exceeding \$20 million and occurring over multiple budget cycles. Such projects would receive priority for grant funds.
 - Provide integrated planning grants to local governments for studies that facilitate the cleanup and reuse of contaminated sites.
 - Eliminate methamphetamine lab site assessment and cleanup grants and derelict vessel remedial action grants as separate types of grants.
 - Provide area-wide groundwater remedial action grants without requiring local governments to be a potentially liable person or seek reimbursement of grant funds from such persons.
 - Enter into grant agreements with local governments before they acquire or secure access to a property, provided they include a schedule.
 - Provide periodic reimbursement of the costs of independent remedial actions.
 - Implement cash management principles to ensure budgeted funds are put to work.
2. Make other appropriate changes to the requirements governing remedial action grants and loans (such as updating funding limits and recipient match requirements).
3. Streamline existing requirements, improve rule clarity, and improve consistency with other requirements in this chapter or with other state and federal laws and rules (such as coordinating with agency-wide efforts to streamline and standardize grant processes).

Citation of existing rules affected by this order:

Repealed: Chapter 173-322 WAC

Amended:

Suspended:

Statutory authority for adoption: Chapter 70.105D RCW

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as **WSR 14-09-052** on **April 15, 2014**.

Describe any changes other than editing from proposed to adopted version: **See Attachment A.**

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting: N/A

Name: _____ phone () _____
Address: _____ fax () _____
e-mail _____

DATE ADOPTED: August 29, 2014

NAME Maia D. Bellon

SIGNATURE

Maia Bellon by Patty Zehm

TITLE Director, Department of Ecology

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: August 29, 2014

TIME: 1:49 PM

WSR 14-18-060

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	<u>10</u>	Amended	_____	Repealed	<u>2</u>

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	<u>13</u>	Amended	_____	Repealed	<u>13</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>11</u>	Amended	_____	Repealed	<u>11</u>
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

Attachment A – Changes other than editing from proposed to adopted version

The Department of Ecology made the following changes other than editing from the proposed version of new chapter 173-322A WAC, which was filed as WSR 14-09-052 on April 15, 2014, to the adopted version:

1. WAC 173-322A-100(11): Changed definition of the term “decree” or “consent decree.”
2. WAC 173-322A-100(15): Changed definition of the term “economically disadvantaged county.”
3. WAC 173-322A-100(16): Changed definition of the term “economically disadvantaged city or town.”
4. WAC 173-322A-100(44): Added definition of the term “redevelopment opportunity zone.”
5. WAC 173-322A-200(1), -300(4)(a), -310(4)(a), -320(4)(a), -325(5)(a), -330(5)(a), -340(4)(a), -350(4)(a): Changed how frequently Ecology will solicit project proposals from annually to biennially.
6. WAC 173-322A-200(1), -300(4)(a), -310(4)(a), -320(4)(a), -325(5)(a), -330(5)(a), -340(4)(a), -350(4)(a): Added authority for Ecology to update its ten-year financing plan as needed during a biennium.
7. WAC 173-322A-200(1), -320(4)(a), -325(5)(a): Added requirement that, for multibiennial oversight remedial action grant projects, proposals must be updated biennially.
8. WAC 173-322A-200(2), -320(4)(b), -325(5)(b): Added requirement that, for multibiennial oversight remedial action grant projects, an application must be submitted before each biennium for which additional funds are requested.
9. WAC 173-322A-200(5), -300(4)(e), -310(4)(e), -320(4)(e), -325(5)(e), -330(5)(e), -340(4)(e), -350(4)(e): Added authority for Ecology to adjust funding levels or fund additional eligible projects during a biennium if additional funds should become available.
10. WAC 173-322A-220(6): Clarified that the subsection applies only to claims for remedial action costs at a hazardous waste site, not other types of claims, such as for natural resource damages.
11. WAC 173-322A-220(6)(a): Added a provision making the subsection applicable retroactively to projects that are currently funded as of July 1, 2014.
12. WAC 173-322A-220(6)(b): Changed the provision to specify and limit the circumstances under which a recipient must notify Ecology of a claim. Recipients only need to notify Ecology when filing a lawsuit or an insurance claim, not when initiating settlement negotiations.
13. WAC 173-322A-220(6)(c): Added a provision requiring recipients upon application to notify Ecology of the total amount of proceeds received on any claims for remedial action costs at the hazardous waste site. The provision also authorizes Ecology to require the recipient to periodically update the total amount of proceeds received and provide documentation of the proceeds.
14. WAC 173-322A-220(6)(d): Clarified that recipient must notify Ecology of any resolution of a claim (not just final resolution of a claim) for remedial action costs at the hazardous waste site. Also clarified when the recipient must notify Ecology.
15. WAC 173-322A-220(6)(e): Clarified that the total proceeds from all claims (not just proceeds from any one claim) for remedial action costs at a hazardous waste site are considered when determining whether any repayment of grants funds is required.
16. WAC 173-322A-220(6)(e)(ii): Clarified that claim proceeds may be applied against remedial action costs incurred before the resolution of the claim.
17. WAC 173-322A-220(6)(e)(ii) and (iii): Clarified that claim proceeds may be applied only against remedial action costs incurred by the grant or loan recipient.
18. WAC 173-322A-220(7)(c): Changed the deadline for requesting reimbursement of eligible costs from 90 to 120 days after incurring the costs.
19. WAC 173-322A-300(5)(b)(vi): Added as an ineligible cost the cost of testing buildings or other structures for radon when such testing is not required as a remedial action.
20. WAC 173-322A-310(2)(b): Changed project eligibility criteria from the hazardous waste site being located within the applicant’s jurisdiction to the applicant having an ownership interest in property or a demonstrated interest in purchasing property affected by the hazardous waste site.
21. WAC 173-322A-310(3)(b): Added as a separate priority-setting factor whether the hazardous waste site is within a redevelopment opportunity zone.

22. WAC 173-322A-320(2): Clarified that a project may consist of remedial actions conducted under one or more orders or decrees at a single hazardous waste site.
23. WAC 173-322A-320(2)(c) and (d): Changed to also allow funding of projects where a person other than the applicant is required to conduct remedial actions under the federal cleanup law. Also edited for clarity.
24. WAC 173-322A-320(3)(b): Added as a separate priority-setting factor whether the applicant is a prospective purchaser of a brownfield property within a redevelopment opportunity zone.
25. WAC 173-322A-320(6)(c): Changed the eligibility period of retroactive costs for negotiating an order or decree. The costs are eligible if they are incurred within 60 days after starting negotiations for an order or within 120 days after starting negotiations for a decree. Previously, the costs were eligible if they were incurred within 90 days before the effective date of the order or decree. Also reiterated that legal costs are not eligible.
26. WAC 173-322A-320(6)(d)(i)(A): Changed the eligibility period of retroactive costs for conducting independent remedial actions. The costs are eligible if they are incurred within five years before the start of negotiations for the order or decree. Previously, the costs were eligible if they were incurred within five years before the effective date of the order or decree.
27. WAC 173-322A-320(6)(d)(ii): Established a \$600,000 limit on the eligible retroactive costs for independent remedial actions incurred before the start of negotiations for the order or decree.
28. WAC 173-322A-330(4)(b): Added as a separate priority-setting factor whether the applicant is a prospective purchaser of a brownfield property within a redevelopment opportunity zone.
29. WAC 173-322A-330(10): For periodic reimbursement grants, clarified that the purpose of withholding 20% of each payment is to help ensure the recipient completes the cleanup of the hazardous waste site or property.
30. WAC 173-322A-340(3)(b): Added as a separate priority-setting factor whether the hazardous waste site is within a redevelopment opportunity zone.
31. WAC 173-322A-350(2)(e): Clarifies that Ecology is the one that determines whether the drinking water source has been contaminated, or is threatened to be contaminated, by one or more hazardous substances.
32. WAC 173-322A-350(3)(e): Added as a priority-setting factor the ability of the grant to leverage other public or private funding for the provision of safe drinking water.

These changes are explained in greater detail in the Concise Explanatory Statement for the adopted rule, which is available at www.ecy.wa.gov/biblio/1409051.html.